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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ASHOK BITRA,

Plaintiff and Respondent,

v.

HIGH DESERT GURUDWARA,

Defendant and Appellant.

E070387

(Super.Ct.No. CIVDS1602208)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez, Judge. Reversed with directions.

Martell Law Corp. and Nicholas Anthony Martell for Defendant and Appellant.

Law Office of Gary C. Wunderlin and Gary C. Wunderlin for Plaintiff and Respondent.

Defendant and appellant High Desert Gurudwara (“Gurudwara”) appeals from the trial court’s order granting plaintiff and respondent Ashok Bitra relief pursuant to

Corporations Code section 9414.¹ Section 9414, subdivision (a) provides that “[i]f for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates or directors . . . then the superior court . . . upon petition of a director, officer, delegate, or member, may order that such a meeting be called . . . in such a manner as the court finds fair and equitable under the circumstances.” The Gurudwara contended that Bitra lacked standing because he was not a current member, but the trial court held that the issue of Bitra’s membership had been decided in a previous proceeding and that the Gurudwara was therefore precluded from arguing otherwise. The Gurudwara contends this was error, and we agree. We therefore reverse.

I. FACTUAL AND PROCEDURAL HISTORY

A. *Randhawa Action*

We begin with the proceeding that led to the purportedly preclusive ruling. In 2014, Kuldip Randhawa initiated an action seeking relief regarding the governance of the Gurudwara, pursuant to section 9220, subdivision (d). Section 9220, subdivision (d) provides that “[i]f a corporation has not issued memberships and . . . a corporation’s initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.” Randhawa contended that the Gurudwara had not issued memberships, that its

¹ All further statutory references are to the Corporations Code.

articles of incorporation did not name initial directors, and that the incorporator resigned immediately after filing such articles.

In an amended statement of decision filed July 2015, the court denied Randhawa relief, finding in part that the Gurudwara “did issue memberships as evidenced by the Annual Membership Forms completed and signed by 22 members on various dates during the months of May and June of 2009.” But prior to this ruling on the merits, the court had ordered briefing after trial on “potential conflicts between the existence of memberships” and a set of initial bylaws the Gurudwara had enacted in 2013 (2013 Bylaws).² Specifically, the court was concerned about whether the 2013 Bylaws were invalid because they were not approved by a majority of the members.

The Randhawa court found (in the same amended statement of decision) that the 2013 Bylaws were invalid. To do so, the court first concluded that the 22 members from 2009 remained members because “[w]ith no evidence to the contrary, the Court must assume that these memberships remain.” The court then noted that only 11 people voted to adopt the 2013 Bylaws. Because 11 votes could not constitute a majority, the court held that the 2013 Bylaws were invalid.

B. Bitra Action

Bitra filed the current action in 2016, requesting pursuant to section 9414 that the court order a meeting of the Gurudwara’s existing members to enact bylaws. According to Bitra, judicial intervention was necessary because the Gurudwara refused to hold such

² The 2013 Bylaws were entitled “Completely Amended and Restated Bylaws of High Desert Gurudwara,” but the court found that no previous bylaws existed.

a meeting. In opposition, the Gurudwara contended that Bitra lacked standing because even though he might have been one of the 22 members from 2009, he was not a current member. The Gurudwara also contended that it held a member meeting to enact bylaws in 2015—after the Randhawa action had been adjudicated—but that Bitra was not given notice because he was not entitled to it.

At trial, the parties offered conflicting evidence on whether Bitra was a current member. Although Bitra testified that he was, Jeet Singh, a director and treasurer for the Gurudwara, disagreed. Jagtar Sandhu, the president of the Gurudwara, testified that the Gurudwara currently has no members at all.

The trial court granted Bitra’s request for section 9414 relief. In a tentative statement of decision later adopted as final, the trial court “took judicial notice of the findings in the [Randhawa action] and [found] such are binding upon [the Gurudwara] in this action, which as a result of collateral [estoppel] and res judicata bar [the Gurudwara] from relitigating those same issues here.” According to the trial court, the Randhawa court’s 2015 amended statement of decision “establish[es] [Bitra] is an existing member of the [Gurudwara]; that the attempt by the current board to enact by-laws was invalid; and that to resolve this dispute the [Gurudwara] must enact valid by-laws.”

II. DISCUSSION

The Gurudwara contends that it was error for the trial court to give preclusive effect to the Randhawa court’s determination regarding Bitra’s membership status. We agree.

“Collateral estoppel, or issue preclusion, ‘precludes relitigation of issues argued and decided in prior proceedings.’” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) “It is grounded on the premise that ‘once an issue has been resolved in a prior proceeding, there is no further factfinding function to be performed.’” (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 864.)

“Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.” (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

The composition of the Gurudwara’s membership—whether as of the time the Gurudwara adopted new bylaws following the Randhawa action (2015), the time Bitra initiated this action (2016), trial (2017), or anytime thereafter—was not, and could not have been, litigated in the Randhawa action. The Randhawa court determined that the 22 members in 2009—which included Bitra—remained members, but it did so only as an intermediate step in considering whether the 2013 Bylaws were validly enacted. That meant that the Randhawa court needed to know who the members were at the time the 2013 Bylaws were voted on. The Randhawa court did not need to determine who the Gurudwara’s members were at any later point in time, so there was no need for it to

decide whether the 22 members in 2009 remained members of the Gurudwara *after* 2013. The Gurudwara’s evidence of a 2015 member meeting after the ruling on the merits of the Randhawa lawsuit creates an issue not precluded by collateral estoppel.

Bitra argues that the trial court’s order should be upheld because it is supported by substantial evidence. But “[t]he trial court’s application of the doctrine of collateral estoppel or issue preclusion is a question of law subject to de novo review.” (*Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1507.) Bitra also argues that the Randhawa court “found that the [Gurudwara] had existing members.” True, but as discussed above, that is not the same as finding who the members are, or whether there are any at all, at any point in time after the vote on the 2013 Bylaws. The Randhawa court did not and could not have determined future membership status, so issue preclusion does not apply.

III. DISPOSITION

The judgment is reversed. The matter is remanded to the trial court with directions to consider the merits and resolve the issue of Bitra’s standing. The Gurudwara is awarded its costs on appeal.

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RAPHAEL

J.

We concur:

SLOUGH

Acting P. J.

MENETREZ

J.